

WHYTE HIRSCHBOECK DUDEK S.C.  
555 East Wells Street  
Suite 1900  
Milwaukee, Wisconsin 53202  
Patrick B. Howell (State Bar No. 1008527)  
Ann M. Maher (State Bar No. 1000529)  
Telephone: (414) 273-2100  
Facsimile: (414) 223-5000  
Contact Person Email: phowell@whdlaw.com

Hearing Date: March 21, 2007

Attorneys for HB Performance Systems, Inc.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	x	
	:	
In re:	:	
	:	Chapter 11
DELPHI CORPORATION, <u>et al.</u> ,	:	
	:	Case No. 05-44481 (RDD)
Debtors.	:	
	:	(Jointly Administered)
-----	x	

**AFFIDAVIT OF RAND MCNALLY IN SUPPORT OF  
HB PERFORMANCE SYSTEMS, INC.'S SUPPLEMENTAL RESPONSE**

STATE OF WISCONSIN     )  
                                  ) ss  
COUNTY OF OZAUKEE    )

Rand McNally, being first duly sworn on oath, deposes and states as follows:

1. I am the President and CEO of HB Performance Systems, Inc. (f/k/a Hayes Brake LLC)("HB") of Mequon, Wisconsin and I make this affidavit of my own personal knowledge being duly authorized to do so.

2. HB manufactures and sells high performance disc brake systems for, among other things, motorcycles, bicycles and snowmobiles. For many years, HB has been a supplier of motorcycle brake systems (the "Current Brake") to Harley-Davidson, Inc. for use on Harley-Davidson motorcycles.

3. In or about mid-2002, Harley-Davidson requested a proposal ("RFQ") from HB for a motorcycle brake system to be used on the proposed 2007 Harley-Davidson Brake System Platform ("2007 Brake").

4. Because the RFQ from Harley-Davidson included a request for advanced braking technology like an anti-lock braking system ("ABS") with which Delphi had experience, on May 8, 2002, HB issued an RFQ to Delphi for Delphi's assistance with the Current Brake and the proposed 2007 Brake. HB requested that Delphi provide know-how and expertise in the analysis, review, evaluation, (including testing), and recommend improvements in the Current Brake and the 2007 Brake, including reviewing associated manufacturing and assembled methodologies, with a view toward improving brake design and manufacturing, and making recommendations about specific components.

5. In response to the HB RFQ, on or about August 1, 2002, HB and Delphi entered into an Agreement ("the Agreement") pursuant to which Delphi agreed, among other things, to assist HB with certain of the motorcycle brake systems HB supplied to Harley-Davidson, Inc. for use on Harley-Davidson motorcycles. A true and correct copy of relevant portions of the Agreement that are not Confidential are attached hereto as Exhibit A.

6. The "Products" covered in the Agreement were the Current Brake products HB supplied to Harley-Davidson, the 2007 Brake and the Advanced Brake contemplated for the 2007 Harley-Davidson Brake System Platform, and a Controlled Brake which could be integrated with other Controlled Brake Components.

7. The parties agreed on a "Program" which included the optimization of the Current Brake and the development of the 2007 Brake and Advanced Brake for the Harley-Davidson 2007 Brake System Platform ("Platform"), consistent with Harley-Davidson's requirement to be

a world class leader in motorcycle brakes. In that regard, Delphi agreed to use its resources, such that HB would have a braking Program to meet Harley-Davidson requirements.

8. Delphi agreed, among other things, to make qualified engineers, and support staff, available to HB beginning on August 1, 2002 “for an average of 10,000 hours per year” to support the Program as described in the Agreement. That included the use of related equipment, tools and materials. Overall Program direction was to be provided by HB. Delphi resources were to be located at HB, Harley-Davidson or Delphi as necessary to support the Program.

9. With respect to Compensation, the parties agreed as follows:

Hayes Brake will pay 3% of OEM Harley-Davidson “Net Sales” for the Current Brake, and for the 2007 Harley-Davidson Platform, as defined in the current RFQ for the term of the 2007 Platform OEM sales, a copy of which is attached hereto as Exhibit “I”. Hayes Brake shall pay Delphi \$75,000 on the first of every month with adjustments made quarterly to the 3% requirement. Notwithstanding the foregoing, the total payment to Delphi shall be a minimum of \$1.0 million per year, unless Hayes Brake gets less than 100% of the 2007 Harley-Davidson Platform. If Hayes Brake gets less than 100%, then this Agreement shall be subject to renegotiation.

Agreement, Exhibit III at p. 7, ¶ 1 (emphasis added).

10. Beginning August 1, 2002, HB paid Delphi \$75,000 per month pursuant to the terms of the Agreement.

11. In early 2003, HB and Delphi learned from Harley-Davidson that HB would not get 100% of the 2007 Harley-Davidson Platform.

12. As a result, HB initiated discussions with Delphi to renegotiate the Agreement as required by the Compensation provisions thereof. HB’s goal was to determine a way in which Delphi could still provide HB with “an average of 10,000 hours per year” of engineering services

notwithstanding the fact that HB would not be making 100% of the 2007 Harley-Davidson Platform.

13. However, despite the failure of HB to obtain 100% of the Harley-Davidson Platform which formed the basis of the Agreement in the first instance, Delphi refused to renegotiate the terms of the Agreement – or terminate it – and promised HB that Delphi could satisfy its obligation under the Agreement and make qualified engineers, and support staff, available to HB “for an average of 10,000 hours per year” to support the Program.

14. HB was skeptical but Delphi ultimately persuaded us that it could, indeed, provide the requisite services and value to HB under the Agreement. Therefore, HB continued to pay Delphi \$75,000 per month and to work with Delphi in its attempt to fulfill its obligations to provide those services.

15. However, despite the parties’ best efforts, between August 1, 2002 and July 31, 2003, Delphi provided HB with only 3673 hours of service (2296 of which were ABS hours) Between August 1, 2003 and July 31, 2004, Delphi provided HB with only 5281 hours of service (2442 of which were ABS hours).

16. By contrast, by July 31, 2004, HB had paid Delphi **\$2,000,000**. Although the parties recognized that there would be some fluctuation in hours used during each year of the Agreement, and included the “average” language to accommodate that fluctuation, in reviewing these results, it became apparent to me that Delphi could not possibly provide HB with “an average of 10,000 hours per year of service” as required by the Agreement.

17. On June 30, 2004, I traveled to Delphi’s Dayton, Ohio facility and met with

representatives of Delphi to discuss my concerns about Delphi's inability to provide "an average of 10,000 hours per year" of engineering or other services to HB in return for the \$1,000,000 per year HB was paying under the Agreement and to discuss strategic issues and alternatives to resolve the problem. A true and correct copy of the June 30, 2004 Power Point presentation used at that meeting is attached hereto as Exhibit B.

18. At that August meeting, Delphi assured me that it would work with HB personnel to find ways to provide an average of 10,000 hours per year of service as required by the Agreement and, in a good faith effort to maintain the relationship, HB continued to pay Delphi \$75,000 per month until December 31, 2004.

19. In January of 2005, I instructed our Chief Financial Officer to discontinue making \$75,000 monthly payments to Delphi until the parties reached an agreement concerning how Delphi was going to provide services that would average 10,000 hours per year over the term of the Agreement.

20. Between August of 2004 and February of 2005, Delphi provided only 1418 hours of service to HB. On February 15, 2005, the parties met at HB to discuss the Agreement. HB made a presentation to Delphi outlining its concern about the relationship, the hours and dollars lost, the inability to get an average of 10,000 hours per year in service and other issues. A true and correct copy of the Power Point presentation HB made at that meeting is attached hereto as Exhibit C.

21. At the end of the meeting, I met separately with Dan Warrell to discuss a possible resolution of the dispute. Mr. Warrell agreed to provide HB with a plan within 30 days which would provide HB the average 10,000 hours of services per year for which it contracted and

paid.

22. Delphi did not provide the promised plan within the agreed upon 30 day time period – by March 15, 2005 - and I asked Russell Dudan, of HB, to prepare a plan to submit to Delphi. During April and May of 2005, Mr. Dudan and Mr. Kirk Wan of Delphi communicated about Mr. Dudan's proposed plan and related hours Delphi would provide but were unable to reach an agreement on it.

23. On June 3, 2005, after HB had paid \$2,300,000 to Delphi over 2 years and 4 months, and received a total of 10,372 hours of service, Delphi sent a letter to HB demanding that HB pay an additional \$450,000 and stating, among other things:

The Payment delinquency is unfortunate and unacceptable. Recognizing that Delphi has continued to honor current activities per Hayes Brakes requests against the 10,000 (Ten Thousand) average man hours provided each year, the fact remains that, Hayes Brake now owes Delphi a significant amount of money.

A true and correct copy of that demand letter is attached hereto as Exhibit D.

24. By letter dated June 16, 2005, Mr. Gregory V. Prucey, Manager, Mergers & Acquisitions for Delphi notified HB Performance that it was "invoking its right to terminate the Agreement with two (2) years notice." A true and correct copy of that letter is attached hereto as Exhibit E.

25. By letter dated June 30, 2005, I responded to Mr. Prucey's June 16, 2005 letter expressing disappointment that almost two years after Harley-Davidson communicated its decision concerning the 2007 Brake System Platform, and despite repeated assurances by Delphi that it desired and intended to honor the Agreement and provide Hayes with the required engineering services *despite* the Harley decision, Delphi now expects to terminate the agreement.

A true and correct copy of my response is attached hereto as Exhibit F.

26. Since that date, Delphi has demanded that HB continue to pay \$75,000 per month under the Agreement but has refused to prepare a plan to provide “an average of 10,000 hours per year of services” to HB or to provide non-rendered services for which HB paid prior to December 31, 2004.

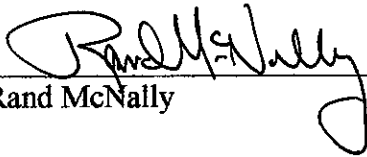
27. Paragraph 4.1(g) of the Agreement provides that:

In case of a termination, the Parties shall reimburse the other Party. . . for amounts paid for which the other party has not already received the associated deliverables...”


28. Delphi did not render 17,781 hours of services to HB but HB paid Delphi \$1,778,100 for those services as reflected on the attached Exhibit G. The ABS hours were “backed out” of the calculation because, although HB was not awarded the 2007 Harley-Davidson Platform, Delphi was and, therefore, it benefited from them.

29. Despite Delphi’s continued expectation that HB pay \$75,000 per month for services it was not providing to HB, and in violation of the confidentiality provisions of the Agreement, Delphi advised Harley-Davidson that it was no longer doing business with HB.

30. On September 7, 2005, I wrote to Delphi and expressed my concern over that breach and over the fact that Delphi was, on the one hand, indicating to HB that it should continue to pay \$75,000 under the Agreement for another two years but, on the other hand, telling Harley-Davidson, that it was no longer doing business with HB. I viewed that communication as a termination of the Agreement. A true and correct copy of my letter to that effect is attached hereto as Exhibit H.

  
Rand McNally

Subscribed and sworn to before me this  
7th day of February, 2007.

  
Notary Public, State of Wisconsin  
My Commission expires: 5/13/07



## **EXHIBIT A**

## AGREEMENT

This Agreement is by and between **HAYES BRAKE, LLC**, a corporation duly organized under the laws of Delaware and having its registered office at 5800 W. Donges Bay Rd., Mequon, WI 53092 USA ("Hayes"), and **DELPHI Automotive Systems, LLC**, a corporation duly organized under the laws of the state of Delaware of the USA and having its registered office at 5725 Delphi Drive Troy, Michigan 48098-2815 USA ("Delphi"), Hayes and Delphi individually referred to in this Agreement as a "Party" and collectively as the "Parties".

### Recitals:

- A. Hayes Brake, LLC currently supplies motorcycle brake systems to Harley-Davidson, Inc. ("Harley-Davidson") for use on Harley-Davidson motorcycles ("Current Brake").
- B. Harley-Davidson has requested a proposal ("RFQ") from Hayes for a motorcycle brake system to be used on the proposed 2007 Harley-Davidson Brake System Platform ("2007 Brake").
- C. Hayes has issued an RFQ to Delphi for Delphi's assistance with the Current Brake and the proposed 2007 Brake (see Exhibit V). This will include Delphi providing its know-how and expertise in the analysis, review, evaluation (including testing), and recommend improvements in the Current Brake and the 2007 Brake, including reviewing associated manufacturing and assembled methodologies, with a view toward improving brake design and manufacturing, and making recommendations about specific components.
- D. Delphi agrees to provide such assistance in accordance with this Agreement, including the Exhibits attached hereto.

In consideration of the mutual covenants contained in this Agreement, the Parties agree to the following terms and conditions:

## ARTICLE I

### The Product

- 1.1 The "Product(s)" provided for in this agreement includes the Current Brake products Hayes Brake supplies to Harley-Davidson, the 2007 Brake and the Advanced Brake contemplated for the 2007 Harley-Davidson Brake System Platform, and a Controlled Brake which could be integrated with other Controlled Brake Components.
- 1.2 The Current Brake and the 2007 Brake include, but are not limited to: calipers, linings, rotors, brake hoses and pipes, rear brake pedals, hand brakes, brake light switches, and master cylinders. 2007 Brake Systems are all 2007 Brake Components integrated as a system with the addition of all required fasteners. The Advanced Brake includes the necessary 2007

STB



GEN

Brake Components, allowing for technological features such as ABS. The Controlled Brake includes, but is not limited to, modulators and a control unit, and is integrated with other Controlled Brake Components.

## ARTICLE II

### The Program

2.1 The "Program" includes the optimization of the Current Brake and the development of the 2007 Brake and Advanced Brake for the Harley-Davidson 2007 Brake System Platform ("Platform"), consistent with Harley-Davidson's requirement to be a world class leader in motorcycle brakes. Delphi agrees to use its resources, such that Hayes Brake will have a braking Program to meet Harley-Davidson requirements.

2.2 Delphi, will make qualified engineers, and support staff, available to Hayes Brake beginning the effective date hereof, for an average total of 10,000 hours per year to support the Program. This includes the use of related equipment, tools and materials. Overall Program direction will be provided by Hayes Brake. Delphi resources will be located at Hayes Brake, Harley-Davidson, or at Delphi as necessary to support the Program. Delphi agrees to allow Hayes Brake personnel to be on site at Delphi as needed to ensure project success.

These engineers will provide support to Hayes Brake in the design, analysis, testing, evaluation, and recommend improvements in the Current Brake, the 2007 Brake, and the Advanced Brake. This includes reviewing associated manufacturing and assembly methodologies, with a view toward improving brake design and manufacturing, and making recommendations about specific components, improving supply chain management (access to Delphi's supply base), and cost controls.

BTS

RELS

2.3 Delphi agrees as follows:

- a) To review the Current Brake and make recommendations for improvements in cost and brake performance;
- b) To review the Hayes Brake proposed 2007 Brake for Harley-Davidson and make recommendations for improvements in cost and brake performance;
- c) To allow access to Delphi's advanced braking technology to Hayes Brake, for use in the 2007 Platform, to include such features as ABS, system integration, etc. ("Advanced Brake"), including prototypes; such as the customer may require, in cooperation to develop an Advanced Brake System. Hayes will retain responsibility for the development and sale of the 2007 Brake, and Delphi will retain the right to sell all controlled brake modulator and related hardware. If necessary, licensing of Delphi Technology will be specifically covered under a separate licensing agreement under reasonable commercial terms.
- d) To take part in Hayes Brake' presentations to Harley-Davidson as needed to secure the 2007 Brake System Platform, and as needed from time to time during the life of the contract.

2.4 Each Party will make the resources available that it deems necessary to fulfill its Program responsibilities, within the limits defined in 2.2.

2.5 Delphi will, on a timely basis, do such testing, analysis and development, for Hayes Brake, at its cost, as is reasonably requested by Hayes Brake in support of the Program and as defined in the Statement of Work, attached hereto as Exhibit II. All test fixtures, other testing, analysis and development as requested by Hayes Brakes will be quoted for time and material and can debit against the allotted 10,000 man hours or be invoiced separately as parties shall agree from time to time.

BTB

CRS

2.6 The parties intend this Agreement to define the first step in a broader relationship which would allow Delphi to develop an integrated system of control suspension, control engine, and control brakes for Harley-Davidson, and other systems for different applications.

2.7 The Harley-Davidson Foundation Brake RFQ is attached as Exhibit I.

### ARTICLE III

#### Harley-Davidson Contract

3.1 Hayes Brake has contractual Agreements with Harley-Davidson for the Current Brake. Hayes Brake has made a quotation to Harley-Davidson for an Agreement with Harley-Davidson for the 2007 Brake, as part of Harley-Davidson's 2007 Platform, and intends to make proposals for the Advanced Brake. Hayes Brake will retain all rights and responsibilities in conjunction with any Agreement with Harley-Davidson.

### ARTICLE IV

#### Term and Termination

4.1 a. This Agreement is effective as of the date the Parties agree, and will continue through the life of the Harley-Davidson 2007 Brake System Platform to Hayes Brake. In the event that Harley-Davidson does not award the 2007 Brake System Platform to Hayes Brake by December 31, 2002, or sometime after the award of the 2007 Brake Program, cancels Hayes Brake as the Brake Supplier, then this Agreement shall terminate.

b. Notwithstanding the foregoing, one year after the 2007 Harley-Davidson Platform launch, either Party may terminate this Agreement by providing a two (2)-year written notice to the other Party.

c. In the event that Hayes Brake sells its assets which relate to the Harley-Davidson business, or has a change of control of its member interest, then the purchaser of the assets, or new controlling member, or Delphi, has the right to terminate this Agreement, with six (6) months' written notice.

BTB

RSMS

d. In the event that Harley-Davidson awards a significant part of the 2007 Brake (brake system, system integration or control braking business) to a competitor of Delphi, Delphi has the right to terminate this Agreement, with two (2) year written notice.

e. In the event that Delphi or Hayes Brake fails to meet its obligations as provided herein, the other party has the right to terminate this Agreement, with six (6) month's written notice.

f. In the event that either party elects to terminate this Agreement, both parties agree to work with Harley-Davidson to ensure a smooth transition with minimal impact on Harley-Davidson.

g. In case of a termination, the Parties shall reimburse the other Party for either: 1) the costs proven to have been incurred up to the date of termination, which have not been paid, but which would normally be paid; or 2) for amounts paid for which the other party has not already received the associated deliverables, as provided for in the Statement of Work attached hereto.

#### **ARTICLE V**

##### **Statement of Work**

5.1 A Statement of Work is attached as Exhibit II.

#### **ARTICLE VI**

##### **Compensation**

6.1 The Compensation to be paid is described in the attached Exhibit III.

#### **ARTICLE VII**

##### **Terms and Conditions**

7.1 Terms and conditions governing this Agreement are attached in Exhibit IV.

BTB

ORIS

The Parties have caused their duly authorized representatives to execute two copies of this Agreement on the date(s) given below.

**Hayes Brake LLC**

By: Randy McNally  
Print Name: RAND McNALLY  
Title: PRESIDENT & CEO  
Date: 8.1.2002

**Delphi Automotive Systems LLC**

By: Bruce T Beck  
Print Name: BRUCE T BECK  
Title: CHIEF ENGINEER CHASSIS MODULES  
Date: 01 AUG 02

Exhibit II

**Statement of Work**

**Immediate Program Opportunities:**

- 1) ABS modulator and control system from concept through production for Harley-Davidson Police bikes and limited FL volumes (Current for MY07 foundation dictated by Harley-Davidson timing.)
- 2) MY07 Foundation Brake System Support
  - a) Technical and Process Training for Hayes Brake – ADAMS, Advanced Braking, Reliability Testing, NVH, Program Management, Supplier Sourcing, Manufacturing Methods, Foundation Brake Design
  - b) Program support: Risk analysis, FMEA review, analysis plan, sourcing support, and system analysis support
- 3) Current Brake System Support
  - a) NVH plan and support
  - b) Manufacturing, supply chain and product cost reduction opportunities
  - c) Pad wear improvement opportunities

**Working Construct:**

- 1) **ABS add-on system for Harley-Davidson Police and FL's**
  - a) Hayes Brake will retain "Tier 1" status with Harley-Davidson for the ABS Base Brake System application and Delphi will be "Tier 1" for the sale of ABS Modulators to Harley-Davidson and both

BTB

CRELL



Hayes Brake and Delphi will submit a joint commercial proposal for the complete controlled brake system to Harley-Davidson.

- b) Delphi is responsible for ABS modulator specification, design, performance, validation, reliability, supply, and the resources associated with the project (modulator development will not count against Hayes Brake 10,000 man hour per year allowance, however integration of the modulator into the vehicle environment will be part of the 10,000 hours of technical support, platform specific algorithm development can be part of the 10,000 hours of technical support and will not exceed 320 man hours per platform application.).
- c) Delphi will share information with Hayes Brake related to ABS based on normal supply relationship. Delphi proprietary information will not be shared.
- d) Hayes Brake will assign an engineer to work directly with Delphi to set system specifications and defining algorithms.
- e) Delphi will be responsible for the development of all related software and algorithms
- f) Hayes Brake is responsible for the controlled brake / foundation brake system specification, design, performance, validation, reliability, supply, and resources associated with the project.
- g) Hayes Brake will lead vehicle integration, however, Harley-Davidson will need to direct the Hayes Brake/Delphi team on vehicle locations and envelope sizes.
- h) Vehicle level prove-out and tuning will be a collaborative effort between Hayes Brake and Delphi on a closed course at a mutually agreed location.

**2) MY07 Foundation Brake System Support**

- a) MY07 Foundation Brake System Program Support: Risk analysis, specification review, FMEA review, analysis plan, sourcing support, engineering support and system analysis support.
  - i) Hayes Brake and Delphi will review the Phase #0 and Phase #1 project plans and determine where Delphi support should be applied for the first year.
  - ii) Quarterly consultation and program review sessions will be held with a Delphi executive mentor and appropriate members of Delphi engineering and reliability team and the Hayes Brake development team.

RTB

CRSLS

- iii) Delphi activity will be required in advanced manufacturing and supply chain activities early in the program.
  - iv) Delphi will be requested to provide laboratory, dynamometer, data reduction, analysis and validation assistance from Delphi facilities and resources will be allocated based on constraints and priority of all programs in queue. All tests, fixtures, and validation resources will be quoted for test time and material, and are subject to the terms of Article 2.5 of this Agreement.
- b) Technical and Process Training for Hayes Brake – ADAMS, CAE Analysis, Advanced Braking, Reliability Testing, NVH, Program Management, Supplier Sourcing, Manufacturing Methods, Foundation Brake Design
- i) Delphi will provide Hayes Brake with in-depth training on critical topics for continued Hayes Brake business growth and development.
  - ii) Delphi agrees to allow reasonable access to Delphi facilities, as needed to ensure project success, and Hayes Brake personnel will be subject to site rules for safety and confidentiality.
- c) ADAMS and CAE Analysis
- i) Hayes Brake personnel will interact with Delphi's Manager of the mechanical integration group to fulfill the analysis (ADAMS, thermal analysis, structural analysis, dynamic analysis) plan deliverables for the MY07 project.
  - (1) Hayes Brake personnel to reside at Delphi's Tech Center Brighton to work under the direction of the Mechanical Integration Group on a specific Hayes Brake project.
  - ii) Delphi should direct and support the contract as soon as it is signed with Harley-Davidson for the 2007 project to work hand in hand with Hayes Brake personnel in creating the complete motorcycle model and validating the models for dynamic and NVH analysis.

3) Current Brake System Support

BTD

CRS

- a) Support in the identification and solution to the root cause of ~620 Hz brake noise on the current Harley-Davidson platforms
  - i) Delphi will assign NVH resources to work with Hayes Brake personnel.
  - ii) Delphi will be requested to provide laboratory, dynamometer, data reduction, analysis and validation assistance from Delphi facilities and resources will be allocated based on constraints and priority of all programs in queue. All tests, fixtures, and validation resources will be quoted for test time and material, and are subject to the terms of Article 2.5 of this Agreement.
  - iii) Noise solution for the current brake system must be available for a MY05 launch.
  - iv) Delphi will support activities to assist Hayes Brake to develop friction material to improve wear characteristics with a target of 15% improvement with no negative effect on brake noise.
- b) Cost reduction efforts on the current Hayes Brake product for the MY05 and MY06 offerings.
  - i) Delphi and Hayes Brake will jointly review current product, processes, and supply chain for potential savings.
  - ii) Potential opportunities will need to be analyzed through business cases jointly developed by Hayes Brake and Delphi.
  - iii) A joint Hayes Brake and Delphi committee will prioritize cost reduction efforts based on risk, return, and customer impact.
  - iv) Small project teams will be setup to focus on individual cost reduction efforts.
  - v) The team should focus on internal changes to our processes for MY04 through MY06. Design changes can be incorporated into the MY06 product, but the payback of the cost reductions would be limited to 1 - 2 years.

Working Rules:

In order to insure speed, thoroughness, effectiveness, and efficiency of the Hayes Brake / Delphi team the following working rules should be adopted.

- 1) All programs need to be reviewed jointly by Hayes Brake and Delphi to determine the resource budget; what types of resources should be applied to which projects and when.
- 2) Both Hayes Brake and Delphi employees are to interact with each company's tools and techniques freely as required to support the program. All activities are governed by the terms of confidentiality as provided in paragraph 3 of Exhibit IV herein. All intellectual property is protected as provided in paragraph 4 of Exhibit IV herein.
- 3) Each party will be responsible for their own travel related expenses associated with the exchange program and facilities and equipment usage, (not including laboratory, test, and dyno) at the others site are to be forgiven by both sides as a cost of doing business in the program.
- 4) In the event that Delphi resources are requested by Hayes Brakes to re-locate to Harley-Davidson or Hayes Brake as a resident, Hayes Brake will reimburse Delphi for Delphi normal and customary employee re-location expenses.
- 5) Formal request and planning process for resources shall be created and agreed to between Hayes Brake and Delphi.
- 6) A reporting system must be created to track the usage of the 10,000 hour per year allotment.

BTB

CRMS

Exhibit III

Compensation

1. Hayes Brake will pay 3% of OEM Harley-Davidson "Net Sales" for the Current Brake, and for the 2007 Harley-Davidson Platform, as defined in the current RFQ for the term of the 2007 Platform OEM sales, a copy of which is attached hereto as Exhibit "I". Hayes Brake shall pay Delphi \$75,000 on the 1<sup>st</sup> of every month with adjustments made quarterly to the 3% requirement. Notwithstanding the foregoing, the total payment to Delphi shall be a minimum of \$1.0 million per year, unless Hayes Brake gets less than 100% of the 2007 Harley-Davidson Platform. If Hayes Brake gets less than 100%, then this Agreement shall be subject to renegotiation. The parties agree that the maximum payment shall be \$1,500,000 (adjusted for inflation with the year 2002 as the base) per year, no matter what the sales for the Current Brake, or the 2007 Brake total.

Such payment will commence at the execution of this document. This compensation is for engineering services and is not intended as payment for a license in Delphi's Intellectual Property.

In the event that Delphi becomes the Tier 1 supplier to Harley-Davidson for the Current Brake or the 2007 Brake, these payments shall cease.

"Net Sales" shall mean any and all sales, less returns, allowances, and credits, on OEM Harley-Davidson Braking System sales for the Current Brake and the 2007 Harley-Davidson Advanced Brake Platform. No payment will be due to Delphi for Hayes Brake's sales to Harley-Davidson for the "Sportster" platform, parts, or accessories, or other non-brake sales to Harley-Davidson, including clutches.

2. Hayes Brake shall account for OEM Harley-Davidson Sales quarterly, commencing with the execution of this agreement. Such accounting shall be completed within forty-five (45) days after the

DTB

RSLS

end of the quarter. Hayes Brake shall pay the amount based on Net Sales to Harley-Davidson during the quarter, less all monthly payments during the period.

3. Hayes Brake will share with Delphi 50% of any cost savings realized by Hayes Brake as a direct result of Delphi's involvement with Hayes Brake. These savings are exclusive of the \$1.5 million maximum fee due Delphi under paragraph 1 above.

The cost reduction savings will be split after first applying any savings to offset the price reductions already included in the 2007 Platform. Delphi acknowledges that Hayes Brake is required to share cost savings with Harley-Davidson and that Hayes Brake will only share the portion of cost savings actually realized by Hayes Brake resulting from this agreement. Hayes Brake will solely determine whether or not to implement a proposed cost savings program.

If any capital improvements are required to achieve such savings, Hayes Brake will, in its sole discretion, determine whether or not to make such capital improvement. Any savings will be calculated after the cost of capital improvements. Capital Improvements will be considered a "depreciation expense" in calculating any savings, and such expense will be carried forward until a "net savings" can be realized.

4. In the event that Delphi wishes to use any concepts or ideas generated as a direct result of Hayes involvement with Delphi, as defined in Section 4 of Exhibit IV, a separate agreement will be negotiated.

5. The Parties contemplate, for future Harley-Davidson platforms, that Delphi will be the Tier One supplier at such time as Delphi provides an Integrated Controlled Brake System. Delphi agrees that Hayes Brake would then supply brake components to Delphi, based on competitive price, quality and delivery with the right of last refusal for current and future business. Integrated Controlled Brake System. In

B7B

REUS

the event Delphi becomes the Tier One supplier to Harley-Davidson, this Agreement shall terminate, except for the obligation to purchase the Brake Systems from Hayes Brake as provided for above.

BTB

RELL

Exhibit III-A

Employees Subject to Non-Hire Provision  
(Paragraph 2 of Exhibit IV)

Hayes Brake

- Rand McNally
- Jim Buckley
- Russ Dudan
- Bill Jacob
- Jim Dimsey
- Korey Johnson
- Lee Pfeil
- Toby Lichensteiger
- Ryan Lichensteiger
- Antonio Rodriguez
- Matt Soik
- Glen Metzefeld
- Dan Haas
- Gabe Lucas
- Pat Finucan
- Scott Stonecipher
- Lee Schultz
- Tim Abhold
- Tim Poop
- Pat Bartels

Delphi

- Joe Elliott
- Bryan Fulmer
- Tom McCready
- Mark Sonnenberg
- Kevin O'Dea
- Richard Brown
- Bob Mattern
- Marc Georgin

RTB

REUS



## **EXHIBIT B**



# Delphi Discussion Issues

June 30, 2004



## **Strategic Issues**

### **10,000 Resource Hours**

- Addition people in the relationship to help manage?
  - Keith Deyer – Delphi to pay from 10,000 hours
  - Additional support on HB side
- Can Delphi support?
  - Opportunities?



## **Strategic Issues**

### **Access to Intellectual Property**

- Can this be accomplished with current agreement?
- Manufacturing
  - Hydro-piercing
  - Seal detection
- Product
  - Max Torque for Motorcycle and snowmobile
  - Linked for Motorcycle and ATV
  - BBW, Push button park brake



## **Strategic Issues**

### **Working together on new customers**

- How do we approach new customers with foundation and advanced brake systems?
  - Ducati, Triumph, Aprilia, Victory

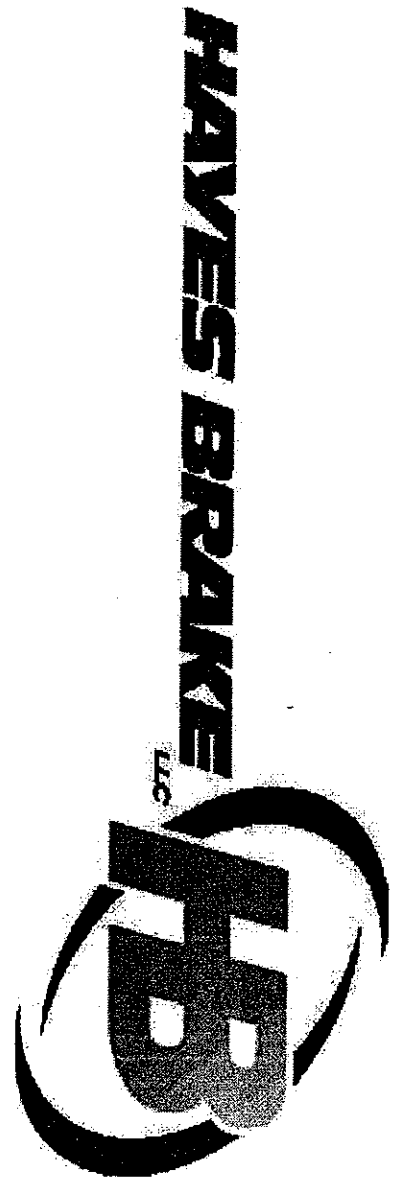


## **Strategic Issues**

### **Supply and Sourcing Support**

- Asian supply of full assemblies
  - Hornet Caliper and Cyclone MC
- Better / quicker quotes on existing Delphi products
  - Is Delphi interested?
- Support for setting up a domestic hose assembly line

## **EXHIBIT C**



# **Delphi Discussion Issues**

**February 15, 2005**





# **Current Issues**

## **Relationship Foundation**

- Hayes entered into this agreement to:
  - Quickly apply viable proven ABS technology to Harley-Davidson Motorcycle to enjoy incremental business
  - Obtain technical resources (10k hours/year)
  - Improve our manufacturing, sourcing, and technical skill set to offset cost
  - Apply Delphi technology to other Hayes markets
  - Create leverage against our competitors



## **Current Issues**

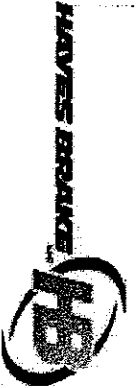
**How does Delphi view  
the health and value  
of the relationship?**



## **Current Issues**

### **ABS/Controlled Brake**

- Hayes and Delphi quickly turned around a great performing product... H-D response slow and awkward
- Lost leverage with H-D when Delphi went outside of Hayes
- No return on investment... Hayes paid \$491k to Delphi plus Hayes expenses



# **Current Issues**

## **Technical Support**

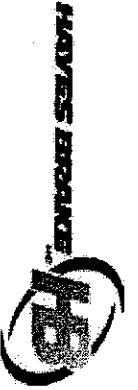
- Cannot get all resources required to meet 10,000 hours
- Noise support and tech training has some value
- Engineering design reviews / foundation design support has not yielded savings
- Halo effect



# Current Issues

	2002/2003 Hours	2003/2004 Hours	2004/2005 Hours	Total Hours	%	\$
Annual Contract Hours	10000	10000	4167	24167		\$2,416,700
HB Hours Used						
Motorcycle ABS	2296	2442	173	4911	20.3%	\$491,100
Powersports ABS	0	257	488	745	3.1%	\$74,500
Benchmarking	94	60	10	164	0.7%	\$16,400
Manufacturing	71	288	77	436	1.8%	\$43,600
Sourcing	14	39	35	88	0.4%	\$8,800
Tech Support	929	943	106	1978	8.2%	\$197,800
Training	59	286	0	345	1.4%	\$34,500
Products - MTB Snow	0	0	70	70	0.3%	\$7,000
Admin	210	966	459	1635	6.8%	\$163,500
Total Hours Used	3673	5281	1418	10372	43%	\$1,037,200
Lost Time	6327	4719	2749	13795	57%	\$1,379,500

- 43% of the contract value was able to be extracted from the relationship
- 20% of those hours were utilized for Motorcycle ABS development - no direct value to HB. Additionally, Hayes Brake has invested significant resource time and assisted Delphi Automotive in gaining market expertise in Motorcycle ABS.
- Total lost value of the relationship can be estimated in excess of \$1.8M. (Lost Time + Motorcycle ABS + Hayes Brake resources)



## **Current Issues**

### **Manufacturing / Sourcing Support**

- Benchmarking... Hayes doing the right things
- Cannot get support or timely response
- We have not been able to find expected value or savings



## **Going Forward**

### **Three areas of value for new agreement**

- Technical Assistance
- Strategic Sales Partner
- Intellectual Property

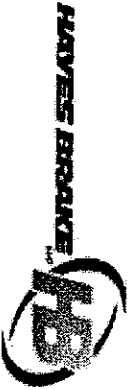


## **Technical Assistance**

### **Reduce the number of hours**

- Reduction in hours and reduction to 2,500 hours
- Areas of support:
  - NVH, CAE, ABS/Controlled Brake Tuning, Foundation Support, Training
  - No longer needed for Manufacturing or Sourcing
- Hours available above the 2,500 at the same rate





## **Strategic Sales Partner**

### **Generate Revenue for Both Companies**

- Hayes Brake is the exclusive supplier of Delphi controlled brake and foundation components and systems for the Motorcycle\*, Snowmobile, ATV, Utility Vehicle, and other recreational non-automotive markets.
- As part of this understanding Delphi will supply HB with the necessary training, software, and hardware for ABS tuning.
- What are bounds of products?
- How involved does Delphi want to be?
- HB Tuning and calibrating systems?



# **Intellectual Property**

## **Maximize Return for Relationship**

- Hayes will source Delphi technologies through Delphi if acceptable cost, quality, and delivery targets can be met AND Delphi wants to manufacture technologies.
- If either party decides manufacture through Delphi is not feasible, Hayes will have the access to a world-wide, exclusive to our markets, license for the technology from Delphi for manufacture at HB or a sub-contractor(s) of Hayes Brake.
- Products
  - Controlled Brake
  - Max Torque for Motorcycle and snowmobile
  - BBW, Push button park brake
- Manufacturing
  - Hydro-piercing

## **EXHIBIT D**

*Hand Copy KAC*  
*ZSH*

**DELPHI**

Gregory V. Pucey  
(248) 813.4819  
gregory.v.pucey@delphi.com

June 3, 2005

**BY FACSIMILE AND FEDERAL EXPRESS**

Rand McNally  
President CEO  
Hayes Brake LLC

**Re: Engineering Assistance Payment**

Dear Mr. McNally,

Pursuant to the Engineering Services Agreement (the "Agreement") between Hayes Brake, LLC and Delphi Automotive Systems LLC, dated August 1, 2002, Hayes Brake is obligated to pay Delphi \$75,000.00 (Seventy-Five Thousand Dollars) on the first of every month with adjustments made quarterly to the 3% (Three Percent) calculation (the "Payment") against Hayes Brake's OEM Harley-Davidson Net Sales for the Current Brake, and for the 2007 Harley-Davidson Platform, as defined in the RFQ, a copy of which is referenced as Exhibit I in the Agreement.

As of the date of this letter Delphi has not received the aforementioned Payment for January, due in March, the Payment for February, due in April, and the Payment for March due in May, and the total of these Payments is \$225,000.00 (Two Hundred Twenty-Five Thousand Dollars). The invoices for Payments due in April, May, and June are in the process of being issued and now total an additional \$225,000.00 (Two Hundred Twenty-Five Thousand Dollars). Delphi considers these Payments for April, May, and June due per the Agreement.

The Payment delinquency is unfortunate and unacceptable.

Recognizing that Delphi has continued to honor current activities per Hayes Brakes requests against the 10,000 (Ten Thousand) average man hours provided each year, the fact remains that, Hayes Brake now owes Delphi a significant amount of money.

Therefore, to prevent Delphi from proceeding with legal action to collect all monies owed to Delphi, Hayes Brake must undertake the following:

By June 15, 2005, present to Delphi the total Payment in the amount of \$450,000 (Four Hundred Fifty Thousand Dollars) to be applied to the amounts owed under the Agreement and continue to work in good faith to resolve your concerns through open dialogue.

Mr. Rand McNally  
June 3, 2005  
Page 2 of 2

Until Hayes Brake meets this requirement, Delphi's engineering support activity will be suspended due to material breach of the Agreement by Hayes Brake for failure to meet the Payment obligation. Certainly Hayes Brake must understand Delphi's need to take this action.

Nothing contained in this letter constitutes a waiver of any rights of Delphi under the Agreement, nor any commitment by Delphi to modify the terms of the Agreement. Delphi shall not be bound by any modification of its contractual agreements with Hayes Brake unless and until Delphi so agrees in writing.

I look forward to hearing from you or your representative to immediately put these actions into effect.

Sincerely,

  
Greg Prucey  
Manager, Mergers & Acquisitions  
Delphi Corporation

cc: Mr. D. Warrell  
Mr. M. Reder  
Mr. K. Wan  
Mr. D. Unrue  
Mr. K. Weaver

## **EXHIBIT E**

# DELPHI

Gregory V. Prucey  
(248) 819.4819  
gregory.v.prucey@delphi.com

June 18, 2005

**BY FACSIMILE AND FEDERAL EXPRESS**

Rand McNally  
President CEO  
Hayes Brake LLC

**Re: Notice of Termination - Engineering Assistance Agreement**

Dear Mr. McNally,

Referencing the Engineering Services Agreement (the "Agreement") entered into by and between Hayes Brake, LLC and Delphi Automotive Systems, LLC, dated August 1, 2002, Delphi had notified Hayes in a letter dated June 3, 2005, that Hayes was delinquent in their obligation to pay Delphi the contractual payments for services since January 2005.

Hayes has not remedied the delinquency referenced in the letter of June 3, 2005, as of the date of this letter. Although Delphi has worked in good faith to provide the contractual services to Hayes in support of our mutual relationship with Harley-Davidson, the payment delinquency is unacceptable.

Since Harley-Davidson has awarded a significant part of the 2007 Brake System Platform to Brembo (a competitor of Delphi), Delphi is invoking its right to terminate the Agreement with two (2) years notice per Article IV Section 4.1.d of the Agreement. This period of service should provide sufficient transition time for Harley-Davidson. Delphi will communicate the change in Delphi's relationship with Hayes to Harley-Davidson.

Delphi will proceed with legal action to recover all contractual payments owed by Hayes to Delphi. Delphi had hoped to avoid reaching this point. Delphi must pursue remedy for the payment breach by Hayes.

Nothing contained in this letter constitutes a waiver of any rights of Delphi under the Agreement, or any commitment by Delphi to modify the terms of the Agreement. Delphi shall not be bound by any modification of its contractual agreements with Hayes Brake unless and until Delphi so agrees in writing.

Sincerely,

  
Greg Prucey  
Manager, Mergers & Acquisitions  
Delphi Corporation

cc: Mr. D. Warrell  
Mr. M. Reder  
Mr. K. Wan  
Mr. D. Unrue  
Ms. C. Comerford  
Mr. S. Pfeifenberger

## **EXHIBIT F**





Office of  
**Rand McNally**  
President and  
Chief Executive Officer  
Direct: (262) 238.4305  
Facsimile: (262) 512.4200  
Email: rmcnally@hayesbrake.com

6/30/05  
August 9, 2005

Facsimile to 248.813.3825 & 248.813.4866 and Express Mail

Delphi  
Energy & Chassis Systems  
World Headquarters  
M/C 480-405-100  
5725 Delphi Drive  
Troy, MI 48098-2815  
Mr. Greg Prucey  
Manager, Mergers & Acquisitions

Re: August 1, 2002 Agreement between Hayes Brake, LLC and  
DELPHI Automotive Systems, LLC

Dear Mr. Prucey:

I was disappointed to receive your letter dated June 16, 2005 indicating that, almost two years after Harley-Davidson communicated its decision concerning the 2007 Brake System Platform, and despite repeated assurances by Delphi that it desired and intended to honor the Agreement and provide Hayes with the required engineering services *despite* the Harley decision, Delphi now expects to terminate the Agreement pursuant to Article IV, Section 4.1.d. Delphi waived its right to rely on Section 4.1.d when, in the first quarter of 2003, it represented to Hayes that it did not intend to terminate the Agreement and convinced Hayes not to exercise its option to do so either.

Hayes relied then, and continued to rely until recently, on Delphi's repeated assurances that it would provide the engineering services for which Hayes was paying under the terms of the Agreement. During that same period of time Delphi, on the other hand, has not been ready, willing or able to provide those engineering services to Hayes. In fact, representatives of Delphi recognized that Hayes was not receiving value under the Agreement but, rather than agree to terminate or renegotiate it, they repeatedly assured me and other Hayes representatives that they would present a proposal outlining



Delphi letter 6.30.05.doc

5800 W. Donges Bay Road ♦ Mequon, Wisconsin 53092 U.S.A.

the manner in which Delphi could generate 10,000 hours of valuable engineering services to Hayes. Those representations were made to me personally in August of 2003, June 2004 and, again, in February of 2005. No such proposal has ever been presented. Instead, to date, Delphi has provided only 40% of the engineering services for which Hayes has paid in excess of \$2.5 million. Delphi has not acted in good faith in this regard. Your recent letter is just another example.

Hayes is interested in attempting to work with Delphi. However, it will not continue to pay Delphi and receive no value in return. Nor will it continue to rely on Delphi's representations that it will work with Hayes to provide engineering services of value. Those representations are misleading, at best. I would sincerely like to meet to discuss this matter without the need for litigation. However, if Delphi intends to commence litigation to recover the outstanding payments it claims Hayes owes under the Agreement, Hayes will file a counterclaim for \$1.8 million in damages caused by the lost value of the relationship. Those damages were specifically outlined in our February 15, 2005 Power Point presentation and include lost time, lost motorcycle ABS value and lost employee resources.

Finally, pursuant to the terms of our confidentiality agreement, do not communicate with Harley-Davidson about this issue unless we reach a mutual agreement about what will be communicated.

Very Truly Yours,

Rand McNally



Delphi letter 8.30.05.doc

5800 W. Donges Bay Road ♦ Mequon, Wisconsin 53092 U.S.A.

## **EXHIBIT G**

Contract Year	Paid HB Hours	Hours Used	ABS Hours	Total Value	Non-Rendered Services	Delphi Refund
2002/03	10000	3673	2296	1377	8623	\$862,300
2003/04	10000	5281	2442	2839	7161	\$716,100
2004/05*	3750	1926	173	1753	1997	\$199,700
TOTALS	23750	10880	4911	5969	17781	\$1,778,100

\* Paid for Aug, Sept, Oct, Nov, Dec in 2004/5 contract year (5\*75k = 3750 hours)

## **EXHIBIT H**

**PERFORMANCE SYSTEMS** INC.

Office of  
**Rand McNally**  
President and  
Chief Executive Officer  
Direct: (262) 238.4306  
Facsimile: (262) 512.4200  
Email: rand.mcnelly@hbpsi.com

September 7, 2005

Facsimile to 248.813.3825 and Express Mail

Delphi  
Energy & Chassis Systems  
M/C 480-405-100  
5725 Delphi Drive  
Troy, MI 48098-2815

Att: Mr. Greg Prucey, Manager, Mergers & Acquisitions

Re: Response to August 8th, 2002 letter regarding the Engineering Services Agreement

Dear Mr. Prucey:

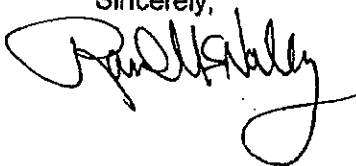
I am disappointed that despite my reminder of Delphi's obligations under the Engineering Service Agreement (the "Agreement"), Delphi communicated with Harley-Davidson ("H-D") about this dispute in violation of our confidentiality agreement and without first consulting with me about the content of that communication. This is a breach of our Agreement. Your reference to Section 9 pertaining to "Media" releases is inappropriate because that section includes a restriction by "excluding" specific terms of this agreement. Termination is a specific term of our Agreement. In addition, at Delphi's meeting with H-D, we have been advised Delphi indicated it was "no longer doing business with Hayes Brake". In light of these facts, I question whether Delphi is truly committed to participating in "good faith negotiations as a way to avoid litigation."

Your message to H-D was we are "no longer doing business". We interpret the communication of this change in our relationship to signal to H-D there are no further deliverables to H-D from the HB/Delphi relationship. In this case, we consider the relationship terminated immediately.

Paragraph 4.1(g) provides that "In case of a termination, the Parties shall reimburse the other Party... for amounts paid for which the other party has not already received the associated deliverables...". Please find attached an invoice for non-rendered services totaling 17,781 hours amounting to \$1.7MM per the Agreement. Please respond promptly with payment information.

I am willing to meet with a representative of Delphi who has authority to enter into a binding settlement agreement to make one last effort to resolve this matter. I am available to meet in a neutral location, like Chicago, during the week of September 12, 2005. Please let me know by Friday, September 9<sup>th</sup>, whether Delphi is interested in making an effort and, if so, what dates during that week work for you.

Sincerely,



Pg 55 of 55



Phone: 262-242-4300

**REMIT TO:**  
**HB Performance Systems, Inc.**  
**Box 88114**  
**Milwaukee, WI 53288-0114**

**\*Invoice\***  
**Date: 9/7/05**  
**Inv # DEL-001**  
**\*Invoice\***

Customer #
Delphi Energy & Chassis Systems 5820 Delphi Drive Troy, MI 48098

Customer #
Delphi Energy & Chassis Systems 5820 Delphi Drive Troy, MI 48098

Our Order #	Customer Order #	Date Ordered	Date Shipped	Ship To	Payment Terms
NA	NA	NA			Net 30
Doc #	Packing List #	FOB Point	Shipped Via		Trade Terms
NA	NA	Per Instructions			NA
LN	Part Number and Description	Qty	Unit Price	Net Price	

1	Non-Rendered Services	1	1,778,100.00	1,778,100.00	
	Contract Years 2002 through 2005				

**\*\* Invoice Total \*\* 1,778,100.00**